

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

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U.S. DISTRICT COURT  
N.D. OF ALABAMA

UNITED STATES OF AMERICA )

v. )

RICHARD E. BOTTS,  
Defendant )

INFORMATION

The United States Attorney charges, that at all times material to this Information:

Count 1

Conspiracy to Commit Securities Fraud; False Books and Records and Mail Fraud  
Title 18, United States Code, Section 371

INTRODUCTION

1. Defendant **RICHARD E. BOTTS** was employed at HealthSouth Corporation. ("HealthSouth") since 1988 in the tax department. In May 1998, defendant **BOTTS** was promoted to the position of Senior Vice President for Tax. In this position, defendant **BOTTS** headed HealthSouth's tax department which included as many as sixteen employees. As Senior Vice President for Tax, defendant **BOTTS'** responsibilities included reviewing, signing and maintaining HealthSouth's federal tax returns, tax returns for all fifty states, the District of Columbia and Puerto Rico, and providing information to taxing authorities who sought to ensure HealthSouth's compliance with federal and state laws and regulations.

2. HealthSouth was a corporation organized under the laws of the State of Delaware with its headquarters in Birmingham, Alabama. HealthSouth claimed to be the nation's largest

provider of outpatient surgery, diagnostic imaging and rehabilitative healthcare services with approximately 1800 locations. HealthSouth's common stock was listed on the New York Stock Exchange.

3. HealthSouth was an issuer of a class of securities registered under Section 12 of the Securities Exchange Act of 1934 ("the Act"). To sell securities to members of the public and maintain public trading of its securities in the United States, HealthSouth was required to comply with the provisions of the federal securities laws, including Section 13(a) of the Act (Title 15, United States Code, Sections 78m(a) and 78o(d)) and the regulations promulgated thereunder, that were designed to ensure that the company's financial information was accurately recorded and disclosed to the public.

4. Under provisions of the federal securities laws and the provisions promulgated thereunder, HealthSouth was required to, among other things (a) file with the SEC annual financial statements audited by an independent accountant; (b) file with the SEC quarterly updates of its financial statements that disclosed its financial condition and the results of its business operations for each three-month period; (c) make and keep books, records, and accounts that accurately and fairly reflected the transactions and dispositions of the company's assets; and (d) devise and maintain a system of internal accounting controls sufficient to provide – (i) reasonable assurances that the company's transactions were recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles ("GAAP") and other criteria applicable to such statements and to maintain the accountability of assets; and (ii) reasonable assurances that the recorded accountability for assets was compared

with the existing assets at reasonable intervals and appropriate action was taken with respect to any differences.

5. From 1986, when HealthSouth issued its initial public offering, it filed quarterly reports, called Forms 10-Q, and annual reports, called Forms 10-K, with the United States Securities and Exchange Commission ("SEC"), which is located in Washington, D.C. These reports were transmitted directly and indirectly from HealthSouth's offices in Birmingham, Alabama to the offices of RCI Group, Inc. in Washington, D.C., a filing agent that assists companies in electronically filing periodic reports with the SEC, and were thereafter transmitted electronically to and filed electronically with the SEC, where they were available to the investing public.

#### **HEALTHSOUTH'S COMMUNICATIONS WITH INVESTORS**

6. The management of many public companies, including HealthSouth, provided "guidance" to the investing public regarding anticipated earnings per share for upcoming reporting periods. Relying in part on a company's "guidance," many professional securities analysts then disseminated to the public their own estimates of the company's expected performance. These "earnings estimates" or "analyst expectations" were closely followed by investors. Often, if a company announces earnings that fail to either meet or exceed analyst expectations, the price of the company's securities will decline.

7. Numerous analysts of major Wall Street investment firms followed HealthSouth's performance and issued "guidance" estimates regarding its expected earnings. These analysts considered, among other things, HealthSouth management's "guidance" concerning estimated revenue, income and earnings per share, to gauge HealthSouth's performance, financial

condition, and to predict HealthSouth's expected earnings. Similarly, market participants and members of the investing public considered and relied upon HealthSouth's periodic financial statements, including the reports filed with the SEC, and guidance, concerning actual operating results.

### **HEALTHSOUTH'S EARNINGS SHORTFALLS**

8. Beginning at least in or about 1996, a group of HealthSouth's senior officers, which included the then Chief Executive Officer (the "CEO"), (collectively, the "Senior Officers") and others, recognized that HealthSouth's financial results were failing to produce sufficient earnings per share to meet or exceed Wall Street "earning expectations" or "analyst expectations." The Senior Officers and others recognized that the earnings shortfall created a substantial risk that, unless HealthSouth's earnings per share were artificially inflated, HealthSouth's earnings would fail to meet analyst expectations and the market price of HealthSouth's securities would likely decline. Defendant **BOTTS** would and did become aware of the HealthSouth's earnings shortfalls and the potential adverse effect on HealthSouth's stock price if these shortfalls were disclosed to the public.

### **THE CONSPIRACY**

9. Between in or about the fall of 2000 and in or about 2003, in the Northern District of Alabama and elsewhere, the defendant,

### **RICHARD E. BOTTS**

knowingly and willfully joined a conspiracy with other persons to commit offenses against the United States, that is, a conspiracy to:

(1) willfully and knowingly make and cause to be made false and misleading statements of material fact in applications, reports and documents required to be filed under the Securities and Exchange Act of 1934 and the rules and regulations thereunder in violation of Title 15, United States Code, Sections 78m(a) and 78ff and Title 17, Code of Federal Regulations, Sections 240.13a-1; 13a-13 and 13b2-2;

(2) willfully and knowingly falsify books, records and accounts of HealthSouth in violation of Title 15, United States Code, Sections 78m(b) (2) (A) & (B), 78m(b) (5) and 78ff and Title 17, Code of Federal Regulations, Section 240.13b2-1; and

(3) devise and intend to devise a scheme and artifice to defraud and to obtain money and property by means of material false and fraudulent pretenses, representations and promises and for the purpose of executing the scheme and artifice, and attempting to do so, to place and cause to be placed in a post office and an authorized depository for mail matter to be sent and to be delivered by the United States Postal Service, and to deposit and cause to be deposited matter to be sent and delivered by a private and commercial interstate carrier in violation of Title 18, United States Code, Section 1341.

### **THE PURPOSE OF THE CONSPIRACY**

10. The purpose of the conspiracy was for the Senior Officers, and others to fraudulently enrich themselves by inflating artificially HealthSouth's publicly reported earnings and earnings per share and by fraudulently enhancing its reported financial condition.

### **THE MANNER AND MEANS OF THE CONSPIRACY**

The manner and means by which the defendant and others sought to accomplish the conspiracy included, among other things, the following:

11. It was a part of the conspiracy that the Senior Officers of HealthSouth and others would and did engage in a scheme to artificially inflate HealthSouth's publicly reported earnings and the value of its assets.
12. It was further part of the conspiracy that false entries were made in HealthSouth's books and records for the purpose of artificially inflating HealthSouth's revenue and earnings.
13. It was further part of the conspiracy that corresponding false entries were made in HealthSouth's books and records for the purpose of artificially inflating the value of its assets, including, but not limited to, false entries made to HealthSouth's (a) Property, Plant and Equipment ("PP&E") accounts; (b) cash accounts; (c) inventory accounts; (d) intangible asset (goodwill) accounts; and (e) investment portfolio.
14. It was further part of the conspiracy that the Senior Officers and others caused HealthSouth to file publicly with the SEC annual reports and quarterly reports that materially misstated, among other things, HealthSouth's net income, revenue, earnings per share, assets, and liabilities from at least 1998 until the present. As a result of the scheme, HealthSouth's revenue and earnings were inflated by hundreds of millions of dollars on publicly filed reports.
15. It was further part of the conspiracy that defendant **BOTTS** and others, in order to prevent discovery of bogus assets placed on HealthSouth's books and records, generated and caused to be generated false information which was provided to state taxing authorities. The false information was provided as part of tangible personal property tax audits conducted by state examiners who sought to ensure that HealthSouth paid sufficient tangible personal property taxes.

16. It was further part of the conspiracy that defendant **BOTTS** and others, in order to prevent discovery of the false entries on HealthSouth's books and records, prepared, signed and submitted and caused to be prepared, signed and submitted to state tax authorities tax returns for HealthSouth which contained false information including, but not limited to, false information about HealthSouth's taxable income, depreciation deductions and assets.

17. It was further part of the conspiracy that defendant **BOTTS** and others, in order to prevent discovery of the false entries on HealthSouth's books and records, prepared, signed and submitted and caused to be prepared, signed and submitted to the U.S. Internal Revenue Service (IRS) consolidated U.S. Corporation Income Tax Return for HealthSouth which contained false information including, but not limited to, false information about HealthSouth's taxable income, depreciation deductions and assets.

18. It was further part of the conspiracy that defendant **BOTTS** and others maintained in the files, books and records of HealthSouth the above-described state and federal tax returns which they knew to contain false information.

19. It was further part of the conspiracy that defendant **BOTTS** and others, unlawfully, willfully, and knowingly, directly and indirectly, falsified and caused to be falsified, books, records, and accounts which, in reasonable detail, accurately reflected the transactions and dispositions of the assets of HealthSouth including, but not limited to: (1) HealthSouth's consolidated U.S. Corporation Income Tax Return for fiscal year 2000 dated September 15, 2001 and (2) HealthSouth's consolidated U.S. Corporation Income Tax Return for fiscal year 2001 dated September 16, 2002.

## OVERT ACTS

20. In furtherance of the conspiracy and to achieve the objects thereof, the conspirators committed and caused to be committed the following acts, among others, in the Northern District of Alabama and elsewhere:

(1) On or about September 15, 2001, defendant **BOTTS** mailed and caused to be delivered to the IRS via the U.S. Postal Service and private interstate carrier HealthSouth's consolidated U.S. Corporation Income Tax Return for fiscal year 2000.

(2) On or about September 16, 2002, defendant **BOTTS** mailed and caused to be delivered to the IRS via the U.S. Postal Service and private interstate carrier HealthSouth's consolidated U.S. Corporation Income Tax Return for fiscal year 2001.

All in violation of Title 18, United States Code, Section 371.

## COUNT TWO

### Mail Fraud

### Title 18, United States Code, Sections 1341 and 2

The United States Attorney re-alleges paragraphs 1 through 8 of Count One of this Information as though fully set out herein, and further charges:

1. From in or about January 1996, the exact date being unknown, and continuing through in or about March 2003, in the Northern District of Alabama, and elsewhere, defendant

### **RICHARD E. BOTTS**

and others known and unknown devised and intended to devise a scheme and artifice to defraud and to obtain money and property by means of material false and fraudulent pretenses, representations and promises.



### Manner and Means of the Scheme

The allegations contained in paragraphs 10-20 of Count One of this Information are incorporated and realleged as though set forth in full herein as constituting the manner and means employed by the defendant and others.

### Execution of the Scheme

On or about September 16, 2002, in the Northern District of Alabama and elsewhere, defendant **BOTTS**, aided and abetted by others, for the purpose of executing and intending to execute the above-described scheme and artifice to defraud and obtain money and property and attempting to do so placed and caused to be placed in a post office and an authorized depository for mail matter to be sent and to be delivered by the United States Postal Service, and to be deposited and caused to be deposited matter to be sent and delivered by a private and commercial interstate carrier; to wit: mailed and delivered HealthSouth's consolidated U.S. Corporation Income Tax Return for fiscal year 2001 to the IRS.

All in violation of Title 18, United States Code, Sections 1341 and 2.

### COUNT THREE

#### Forfeiture

#### Title 18, United States Code, Section 981(a)(1)(C) & Title 28, United States Code, Section 2461(c)

The United States Attorney further charges:

1. That Count One of this Information is incorporated by reference herein for the purpose of alleging criminal forfeiture pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c).

2. As a result of the foregoing offenses alleged in Count One of this Information, the defendant,

**RICHARD E. BOTTS**

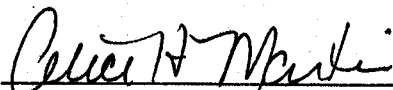
shall forfeit to the United States any property constituting or derived from proceeds traceable to said violation committed by him. Such forfeitable interests include, but are not limited to, any and all interest and proceeds derived therefrom.

3. If any of the property described above as being subject to forfeiture pursuant to Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461(c), as a result of any act or omission of the defendant,

- (1) cannot be located upon the exercise of due diligence;
- (2) has been transferred to, sold to, or deposited with a third person;
- (3) has been placed beyond the jurisdiction of the Court;
- (4) has been substantially diminished in value; or
- (5) has been commingled with other property that cannot be subdivided without difficulty;

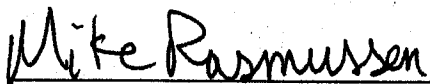
it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of said defendant, up to the value of the above forfeitable property.

All pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c).



ALICE H. MARTIN  
United States Attorney  
Northern District of Alabama

JOSHUA R. HOCHBERG  
Chief, Fraud Section  
Criminal Division  
United States Department of Justice

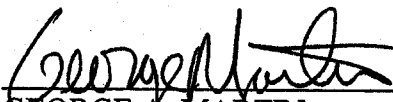


MIKE RASMUSSEN *by Gdm*  
Assistant United States Attorney  
Northern District of Alabama

by:



RICHARD C. SMITH  
Deputy Chief, Fraud Section  
Criminal Division  
United States Department of Justice



GEORGE A. MARTIN  
Assistant United States Attorney  
Northern District of Alabama



RICHARD N. WIEDIS  
Senior Trial Attorney, Fraud Section  
Criminal Division  
United States Department of Justice



J. PATTON MEADOWS *by Gdm*  
Assistant United States Attorney  
Northern District of Alabama